

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Public Safety and Homeland Security Bureau)	PS Docket No. 12-333
Seeks Comment On The Legal and Statutory)	
Framework For Next Generation 9-1-1 Services)	
Pursuant to the Next Generation 9-1-1)	
Advancement Act Of 2012)	
)	
Facilitating the Deployment of Text-to-911 and)	PS Docket No. 11-153
Other Next Generation 911 Applications)	
)	
Framework for Next Generation 911)	PS Docket No. 10-255
Deployment)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”) respectfully submits these reply comments in response to the Public Safety and Homeland Security Bureau’s Public Notice seeking comment on various issues relating to the legal and statutory framework for Next Generation 9-1-1 (“NG9-1-1”) services.¹ As the Commission correctly noted in the Public Notice, the report that the Commission is required to submit to Congress in accordance with the Next Generation 9-1-1 Advancement Act must address several complicated issues related to the legal and regulatory framework for NG9-1-1. In these reply comments, CTIA urges the Commission to promote a uniform, national framework for NG9-1-1 that addresses the most critical issues, including:

¹ *Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012*, Public Notice, DA 12-1831 (Nov. 13, 2012) (“Public Notice”).

- Development by Congress of comprehensive, nationally-defined, limitation-of-liability protection for all stakeholders in the development and deployment of NG9-1-1 services that can spur innovation and deployment of advanced services much faster than would occur under the existing, highly uncertain liability protection landscape;
- Creation of a uniform, national framework for NG9-1-1 oversight that incorporates lessons learned from the challenges of the E9-1-1 transition and promotes a framework that provides certainty to providers, efficiently manages the multiple entities involved in NG9-1-1, defines clear roles for Federal agencies, enables statewide and/or regional coordination, and allocates sufficient funding for NG9-1-1; and
- Focus on and examination of any intellectual property matters related to the adoption of an NG9-1-1 framework.

By incorporating these issues, CTIA believes the Commission's report to Congress will further the national discussion about a comprehensive, uniform approach to NG9-1-1. CTIA and its member companies look forward to continuing to work with Congress, the Commission and all stakeholders to realize the undeniable opportunities that a NG9-1-1 system provides to meet the public's growing expectation for public safety and emergency services.

II. THE COMMISSION SHOULD ENCOURAGE CONGRESS TO ENSURE LIABILITY PROTECTION FOR ALL STAKEHOLDERS INVOLVED IN NEXT GENERATION 9-1-1.

Consistent with CTIA's prior filings and as noted by others in this docket, the NG9-1-1 environment is not fully encompassed or protected by the existing liability protections afforded traditional 9-1-1 services. CTIA urges the Commission to recommend that Congress act to ensure liability protection at the national level, for both Federal and state causes of action, for all persons and entities involved in the provision of and access to 9-1-1 services, regardless of technology. In the Public Notice, the Commission properly highlighted several questions aimed at providing adequate liability protection to NG9-1-1 providers and thus enhancing the

development of NG9-1-1.² Without uniform liability protection for all those involved in NG9-1-1, an effective NG9-1-1 transition could be seriously delayed.

Opening comments in this proceeding reflect widespread support for clear, comprehensive, standardized, nationwide limitation of liability protection for all entities participating in any aspects of emergency services access, including NG9-1-1 services. Indeed, such protections will be essential to a smooth and prompt transition to NG9-1-1.³ As NENA noted, liability protections “have certainly helped to remove a major barrier to entry in a market that would otherwise be far too risky due to its fundamental relation to safety-of-life.”⁴ Similarly, Motorola Solutions observed that “[n]ational consistency in liability protection is essential to encouraging investment and promoting a smooth NG9-1-1 transition . . . [w]ithout adequate liability protection, public safety agencies and their commercial partners may be unwilling to engage in the experimentation and innovation contemplated in this vision.”⁵ Conversely, “[c]ertainty that compliance with federal rules and NG911 technical standards will

² *Id.*

³ See, e.g., Comments of APCO, PS Docket Nos. 10-255, 11-153, and 12-333, at 4 (Dec. 13, 2012) (“APCO Comments”) (“Liability protection, consistent with existing laws, must be in place to ensure a healthy, competitive environment for NG9-1-1 products and services, and promote the most rapid advances in technology to protect life and property.”); Comments of AT&T Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 3-4 (Dec. 13, 2012) (“AT&T Comments”) (“Without [liability protection], access providers and others would be reluctant, or would refuse entirely, to participate in the system that makes emergency services possible or the costs of providing such access would rise and become prohibitive because everyone in the chain of production would have to adjust rates and prices to cover potential claims and losses.”); Comments of TeleCommunication Systems, Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 5 (Dec. 13, 2012) (“TCS Comments”) (“Without adequate liability protection, NG9-1-1 innovation will quickly slow and eventually cease. Such a result is unacceptable, and certainly not in the best interest of the citizens using or benefitting from 9-1-1.”).

⁴ Comments of the National Emergency Number Association, PS Docket Nos. 10-255, 11-153, and 12-333, at 17 (Dec. 13, 2012) (“NENA Comments”).

⁵ Comments of Motorola Solutions, Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 7 (Dec. 13, 2012) (“MSI Comments”).

not result in liability will help facilitate the more rapid nationwide deployment of NG911 services, including voluntary deployments that may be initiated independent of Commission rules.”⁶

While the Commission highlights Section 6506 of the NG9-1-1 Advancement Act as a potential source of protection for providers of NG911,⁷ CTIA agrees with those commenters who caution that this provision alone may be insufficient to provide sufficient liability protection to stakeholders in a NG9-1-1 environment. In the Public Notice, the Commission observes that Section 6506 of the Middle Class Tax Act “extends liability protection to providers of NG9-1-1 service.”⁸ While the Commission is correct that Section 6506 extends the liability protection that is currently in place for local exchange carriers at the state level to providers of NG9-1-1 service, the existing scope of protection may be far from a complete shield from liability. Instead, this statute merely extends the “patchwork” of liability protection in different states,⁹ without regard for the complexities and limitations of existing state laws. Further, this protection is afforded

⁶ Comments of Verizon and Verizon Wireless, PS Docket Nos. 1-255, 11-153, and 12-333, at 5 (Dec. 13, 2012) (“Verizon Comments”).

⁷ *Public Notice* at 3-4.

⁸ *Id.* at 3.

⁹ Comments of United States Cellular Corporation, PS Docket No. 11-153, at 14 (Dec. 12, 2011). Specifically, Section 6506 states that “a provider or user of Next Generation 9-1-1 services . . . shall have immunity and protection from liability under Federal and State Law [to the extent provided under 47 U.S.C. § 615a]” with respect to “the release of subscriber information related to emergency calls or emergency services,” “the use or provision of 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services,” and “other matters related to 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services.” Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012), Title IV, Subtitle E, § 6506 (Next Generation 9-1-1 Advancement Act). Section 615a of the Communications Act, meanwhile, stipulates that certain classes of carriers “shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company . . . [has] under Federal and State law.” 47 U.S.C. § 615a. In other words, Section 6506 merely states that just as wireless carriers and IP-enabled voice service providers should receive parity of protection with local exchange carriers under existing state law, so should providers of NG9-1-1 services.

only to 9-1-1 service providers, excluding other entities involved. This does not constitute sufficient protection, and additional action must be taken if entities involved in the development and provision of NG9-1-1 are to receive comprehensive liability protection.

Commenters in this proceeding agree that existing Federal statutes governing limitation-of-liability in the 9-1-1 context are of limited effectiveness. Motorola Solutions argues that “[w]hile the protections afforded by the NG9-1-1 Advancement Act are a step in the right direction . . . the provisions of Section 6506 are limited in scope and that its protections may not extend to a variety of entities that will be part of the planning, deployment, and operational management of new NG9-1-1 solutions.”¹⁰ AT&T, meanwhile, has correctly concluded that “Congress’s previous attempt to address this issue has fallen short because, while well intended, it has caused confusion and doubt by tying that protection to a myriad of sources—statutes, judicial decisions, tariffs, *etc.*—some of which are obscure or present interpretation issues or are insufficient.”¹¹ As a result of this uncertainty, “many of the underlying liability protection regimes may not necessarily provide adequate assurances that vendors, carriers, integrators, PSAPs, or 9-1-1 professionals will not be subject to potentially devastating civil damage awards.”¹²

For the reasons stated above, CTIA agrees that promoting liability protection for all persons and entities involved in access to 9-1-1 services, regardless of technology, should be

¹⁰ MSI Comments at 7.

¹¹ AT&T Comments at 5. *See also* Verizon Comments at 5 (“[C]urrent law provides important liability protection for NG911 participants, but the degree of immunity varies from state to state and remains subject to the vagaries of common law tort actions. To the extent that a state does not have a 911 liability protection statute, or has a statute that does not clearly cover non-voice services, moreover, liability risks could potentially deter NG911 deployment or increase deployment costs in a particular state.”).

¹² NENA Comments at 17.

articulated at the national level and address liability for both Federal and state causes of action. First, Congress should take action to ensure that all entities involved in 9-1-1 services – not just service providers – are protected.¹³ As AT&T stated, “[l]imitation-of-liability protection for all persons and entities in the provisioning chain for access to 9-1-1 emergency services, regardless of technology, should be a national concern and should be articulated at the national level.”¹⁴

The delivery of wireless NG9-1-1 service can involve many entities: (1) the caller; (2) the service provider from whom the emergency call is generated; (3) the manufacturer of the handset used to make the call; (4) a routing infrastructure/location vendor; (5) an application software vendor; (6) a PSAP CPE/GIS vendor; (7) PSAP personnel; (8) and first responders, among others.¹⁵ As all of these players are critical to the success of NG9-1-1, all must receive comprehensive liability protection. CTIA also agrees with TeleCommunication Systems that “[l]iability protection must extend to all forms of information pushed to a PSAP or pulled from external sources by a PSAP, regardless of the platform over which information travels . . . [f]ederal, state, and local liability protection must extend beyond the PSAP to all entities appropriately involved in the emergency response.”¹⁶ Congress, therefore, “could significantly enhance the market for 9-1-1 related products and services by ensuring – broadly and

¹³ AT&T Comments at 2 (“At a minimum, this fresh thinking should embrace revisiting and strengthening limitation-of-liability protection for all parties in the provisioning chain—not just service and network providers, but manufacturers and vendors, as well, regardless of network or technology. The existing limitation-of-liability protection is inadequate to the task because it is not consistent nationwide and leaves parties uncertain as to the extent that protection is provided (if at all). Limitation-of-liability protection for all in the 9-1-1 provisioning chain should be clear and unambiguous, comprehensive, standardized, nationwide, and applicable to all equally—regardless of technology involved.”).

¹⁴ AT&T Comments at 5.

¹⁵ TCS Comments at 6.

¹⁶ TCS Comments at 6-7.

conclusively – that 9-1-1 vendors, integrators, access network providers, originating service providers, and professionals have comprehensive civil liability protection.”¹⁷

Comprehensive liability protection should be articulated at the national level and extend to both Federal and state causes of action. As NG9-1-1 services are diversified and increasingly mobile, and with the potential for transferring call-answering to locations across state lines (such as in a regional disaster), all parties – citizens, PSAPs, and providers – would be better served by a uniform liability framework that applied to all services in all locations. Such national consistency in liability protection “is essential to encouraging investment and promoting a smooth NG9-1-1 transition.”¹⁸ As Verizon Wireless observed, Congress used such an approach for wireless mobile alerts where uniform liability protection was provided for the transmission of such alerts when done consistent with Commission regulations.¹⁹ For these reasons, a nationwide uniform liability standard is necessary. CTIA therefore strongly supports limitation-of-liability protection at the Federal level.

III. AN EFFECTIVE LEGAL FRAMEWORK IS ESSENTIAL TO PROMOTE RAPID DEPLOYMENT OF NG9-1-1 SERVICES.

CTIA and its member companies have been deeply involved in all aspects of policy and standards development with regard to NG9-1-1. The transition to NG9-1-1 will require significant preparation and stakeholder input, and a clear, effective legal framework is an essential component of this process. CTIA suggests that the Commission incorporate lessons learned from the challenges of the E9-1-1 transition and promote a framework that provides certainty to providers, efficiently manages the multiple entities involved in NG9-1-1, defines

¹⁷ NENA Comments at 17.

¹⁸ MSI Comments at 7.

¹⁹ Verizon Comments at 5-6, citing 47 U.S.C. § 1202(e).

clear roles for Federal agencies, enables statewide and/or regional coordination, and allocates sufficient funding for NG9-1-1.

A. The Commission Should Adopt a Framework that Promotes Certainty for Providers and Effectively Manages the Numerous Entities Involved in NG9-1-1 Services.

As stated further below, CTIA believes that a uniform, nationwide policy framework that clearly delineates the roles and responsibilities of all parties involved will best provide certainty for the numerous entities involved in NG9-1-1. CTIA agrees with Motorola Solutions that “[t]he NG9-1-1 transition demands careful and comprehensive planning at all levels of government and the dedication of significant intellectual and financial resources. The NG9-1-1 transition will take time, but with appropriate leadership and coordination, the public benefits will be substantial.”²⁰ 9-1-1 oversight is conducted at many levels, including at the state, local, and national level. This has the potential to create considerable uncertainty and complications that could inhibit a productive rollout of NG9-1-1 services. For this reason, CTIA supports a uniform, standards-driven nationwide policy framework for NG9-1-1 implementation.

There already exists a “cooperative, standards-based approach” to NG9-1-1 development and deployment,²¹ and Congress and the Commission should continue to rely on collaborative, stakeholder-generated standards development to support the provision of NG9-1-1.²² Reliance on such a framework will ensure that those policies developed are technologically neutral and

²⁰ MSI Comments at 1.

²¹ Verizon Comments at 2.

²² T-Mobile Comments at 3-4 (“Focus on standards is particularly important as NG911 will require an entirely new network architecture and the incorporation of new functional elements. . . [t]hus, it is critical that the key standard-setting bodies—including ATIS, NENA, and 3GPP—receive requisite support as they continue to develop the standards that will enable implementation of the core NG911 architecture.”).

feasible, and that the entities responsible for providing NG9-1-1 services have the certainty needed to develop technologies and services that promote the Commission's NG9-1-1 objectives.

B. The Commission Should Recommend a Framework that Defines Clear Roles for Federal Agencies.

For a legal and regulatory framework for NG9-1-1 to be successful, it must define clear roles and responsibilities for Federal agencies involved in NG9-1-1 operation and deployment. As APCO observed in its comments, there are a number of federal agencies already involved with NG9-1-1, each of which has been charged with different tasks. As such, a successful NG9-1-1 framework must clearly define the different roles of Federal agencies to promote efficient and productive management of NG9-1-1.²³ In other words, "to be effective, the federal role in NG9-1-1 must be clearly delineated and divided among the agencies that are best situated and best trusted to effectively support NG9-1-1 deployment."²⁴ This long-term federal focus on NG9-1-1 standards and goals will help enable the quickest possible transition to NG9-1-1.²⁵

Several commenters suggested that one agency or organization serve as a central Federal NG9-1-1 coordinating body. Motorola Solutions recommends that "Congress specify and fund one organization to operate as the NG9-1-1 coordinating body. This agency should have

²³ APCO Comments at 2 ("A number of federal agencies are involved with NG9-1-1, each with specific areas of jurisdiction and different tasks depending on prior federal legislation. Accordingly, at the national level, there should be a multi-federal agency program to guide NG9-1-1 consisting of the Commission, the National Highway Traffic Safety Administration (NHTSA), the National Telecommunications & Information Administration (NTIA), and the Department of Homeland Security (DHS) that leverages and combines each individual agency's expertise.").

²⁴ NENA Comments at 9.

²⁵ T-Mobile Comments at 3. *See also* Comments of the Telecommunications Industry Association, PS Docket Nos. 10-255, 11-153, and 12-333, at 6 (Dec. 13, 2012) ("TIA Comments") ("TIA believes that the Federal government could serve as a facilitating function amongst carriers, manufacturers, public safety agencies, the accessibility community and state and local entities, and that a need exists for a migration plan to promote as smooth a transition as possible to a robust multimedia emergency services system.").

responsibility and authority for establishing a minimum set of NG9-1-1 requirements to help guide the deployment of and ensure interoperability of state/regional/local level NG9-1-1 services.”²⁶ NENA, meanwhile, stated its belief that the Commission be statutorily designated as the agency responsible for establishing national NG9-1-1 policy.²⁷

CTIA believes that the Commission should have the authority to lay out the framework for NG9-1-1 implementation. CTIA supports Congress encouraging the Commission to work toward a NG9-1-1 framework that ensures consistent implementation of NG9-1-1 across the nation. One example of a framework that Congress has adopted to ensure consistent implementation of a public safety service is the First Responder Network Authority (“FirstNet”) created by the Tax Relief Act. Section 6302(e) of the Tax Relief Act allows states to opt out of the Federally-managed deployment of FirstNet, but those states that choose to opt out must submit an alternate plan for FCC approval.²⁸ If the Commission approves a plan, the state may apply to NTIA for a grant to construct the network within the state and apply to lease spectrum capacity from FirstNet.²⁹ However, if the Commission disapproves a plan, the construction, maintenance, and operation of the network within the state shall proceed in accordance with the plan proposed by FirstNet.³⁰ Similarly, legislation regarding pole attachments stipulated that the Commission had the power to regulate rates, terms, and conditions relating to pole attachments but that it would not have such authority where a state instead engages in this regulation and

²⁶ MSI Comments at 4.

²⁷ NENA Comments at 9.

²⁸ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6302(e) (2012)

²⁹ *Id.*

³⁰ *Id.*

certifies as such to the Commission.³¹ CTIA believes the FCC should recommend that Congress consider models that ensure consistent implementation of NG9-1-1 throughout the U.S.

C. Outdated Federal Regulations Should be Eliminated

As part of developing a framework for NG9-1-1 deployment, it is important that the Commission and Congress eliminate outdated regulations that could hinder NG9-1-1 systems using different technologies and services than the previous model. The Commission and Congress must take care to ensure that any rules adopted do not inadvertently impose outmoded concepts on NG9-1-1 regulation.

In its Comments, T-Mobile highlighted one such example of an outmoded concept that should have no place in a NG9-1-1 framework. Specifically, T-Mobile noted that NG9-1-1 networks will operate on an entirely new architecture that does not include selective routers, yet many existing 9-1-1 regulations specifically reference the selective router.³² For example, the selective router currently serves as the demarcation point allocating financial responsibility between wireless carriers and PSAPs. T-Mobile's findings emphasize the broader point that the Commission and/or Congress will either need to remove requirements that reference outmoded technologies or, at the very least, make clear that such requirements do not apply in the NG9-1-1 context.³³

T-Mobile's identification of the demarcation point issue serves as just one example of how traditional 9-1-1 and E9-1-1 regulations cannot be superimposed onto the NG9-1-1 environment, and that federal guidelines will need to be carefully crafted to reflect the

³¹ 47 U.S.C. § 224(b)-(c).

³² T-Mobile Comments at 10-11.

³³ *Id.*

technology development that comes along with NG9-1-1. The Commission will need the authority to address key operating issues such as this one. CTIA stresses that the Commission should rely on a standards-based process in the development of any policies or regulations that are technology-specific.

D. State and Regional Coordination is Essential to a Successful Deployment of NG9-1-1 Services.

Although CTIA recommends a federal regulatory framework for NG9-1-1 deployment, it also recognizes that states and/or regions are generally best suited to manage the day-to-day elements of NG9-1-1 deployment and operation. Coordination at the state or regional level has considerable benefits and creates efficiencies for many participants in the NG9-1-1 ecosystem. Further, CTIA stresses that a showing of technical and operational readiness at the state and/or regional level should be the triggering mechanism for the applicability of NG9-1-1 requirements to service providers and other entities involved in the provision of 9-1-1 services in a given area.

CTIA and other participants in this and similar proceedings have already documented the benefits of state-level coordination. As Motorola Solutions observed in its comments, “[c]oordinated governance at the state and Federal levels will help to ensure that NG9-1-1 deployments proceed in an interoperable, standards-based manner, and that 9-1-1 funds are distributed and used efficiently for 9-1-1 projects.”³⁴ APCO, meanwhile, found that “[s]tate-level coordination is necessary to best facilitate adherence to a national framework, reduce procurement costs, provide a uniform NG9-1-1 experience for both the public and PSAPs regardless of location, device, or service used, and create reliable expectations and standards on

³⁴ MSI Comments at 5.

the part of the vendor community.”³⁵ Indeed, several commenters have also supported coordination across state lines where feasible and practical.³⁶

State-level coordination also is highly beneficial because it reflects the often large-scale impact of natural or man-made disasters. As AT&T observed, “while most emergency communications involve purely local matters, some will also involve wider areas—e.g., natural disasters, like hurricanes and earthquakes; and man-made events, like terrorism—and consequently involve an interstate and, maybe, a national response.”³⁷ Coordination over wider geographic areas will help facilitate a response to such emergencies. State-level coordination is also practical from a technical and financial perspective, as the range of technologies envisioned for NG9-1-1 will impose substantially higher costs and administrative complexities that are better addressed at a state or regional level than by an individual PSAP.³⁸

For this reason, commenters have supported a mechanism that encourages states and/or regions to engage in NG9-1-1 planning, coordination, and implementation. Motorola Solutions has proposed that each state or region be required to designate an organization responsible for NG9-1-1 oversight, and these organizations should be required to coordinate their initiatives with

³⁵ APCO Comments at 4.

³⁶ Verizon Comments at 3-4 (“Verizon supports at least state-wide implementation and encourages regional efforts where adjacent states can work together on a coordinated deployment of NG911 capability.”); T-Mobile Comments at 6 (“ESINet deployment on a state basis—or on a regional basis where communities of interest cross state lines, as in the New York City Metro Area, or the Washington D.C. Metro Area, or where large states contain multiple regional communities, such as in California, Texas, and Florida—will avoid the problems experienced with PSAP-by-PSAP deployment in the E911 rollout.”).

³⁷ AT&T Comments at 7.

³⁸ Verizon Comments at 4 (“The traditional county- or city-level PSAP-by-PSAP implementation approach used for wireless E911 would be untenable for NG911 because of the substantially higher costs and technical and administrative complexities of NG911 deployment to service providers and PSAPs and the regional and even nationwide nature of many IP-enabled networks and services.”).

a Federal agency while retaining the authority to deploy within the framework established by the coordinating Federal agency.³⁹ T-Mobile, meanwhile, has suggested that Congress create requirements or incentives for states to establish regional or statewide oversight and coordination of NG9-1-1 deployment.⁴⁰ The Commission should carefully consider these proposals and recommend action that would best promote this state-level coordination in tandem with a uniform nationwide framework.

Finally, CTIA stresses that any NG9-1-1 deployment obligations applicable to relevant providers in a particular state be premised on demonstrated PSAP capability and statewide or regional administration across multiple jurisdictions.⁴¹ CTIA has consistently supported this concept, which has critical benefits. First, the costs of NG9-1-1 deployment will be considerable for service providers and other private entities involved in the deployment of NG9-1-1. These entities should not be required to expend these substantial resources until PSAPs have demonstrated that they are ready to provide these services and their associated benefits to the public. Second, a piecemeal, PSAP-by-PSAP transition to NG9-1-1 would cause considerable confusion for the public, as there will be less clarity regarding the emergency communications services available in their area, and citizens may attempt to use a means of emergency communication that is in fact unavailable in the area from which they are calling. Making compliance contingent on state- or regional- level readiness will best serve the efficient deployment of NG9-1-1 with minimal public confusion.

³⁹ MSI Comments at 3.

⁴⁰ T-Mobile Comments at 8.

⁴¹ *See* Verizon Comments at 4.

E. A NG9-1-1 Framework Must Have a Viable Funding System.

The Commission has specifically sought comment on whether legislation is needed to improve or modify funding mechanisms for 9-1-1.⁴² It is clear that the implementation of NG9-1-1 technologies and services will require considerable financial resources. Identifying the appropriate funding for PSAPs and wireless providers to implement the transition to NG9-1-1 is a crucial step that must be taken.

CTIA agrees with Verizon that addressing public safety's NG9-1-1 funding needs should be of "utmost importance"⁴³ and that the Commission's report to Congress be aimed at a funding mechanism that adequately supports the substantial efforts that must be taken to deploy NG9-1-1. In this regard, CTIA urges the Commission not to repeat the mistakes of the past with respect to NG9-1-1 funding mechanisms.⁴⁴ Any funding model adopted needs to be reliable, viable, sustainable, and sufficient to cover the various expenditures associated with NG9-1-1 (keeping in mind that not all costs may have been fully identified). These funds must be used only for 9-1-1 services, and should be managed efficiently to prevent the imposition of unnecessary costs or funding shortfalls for PSAPs.⁴⁵

⁴² *Public Notice* at 5.

⁴³ Verizon Comments at 9 ("Addressing public safety's NG911 funding needs should be of utmost importance, as PSAPs' capabilities to receive and process various types of caller information in an NG911 environment will be at least as important as service providers' capabilities to generate and transmit the information.").

⁴⁴ *See, e.g.*, Comments of CTIA—The Wireless Association, PS Docket No. 09-14 (Dec. 6, 2011) (describing certain states' diversions of funds paid by wireless consumers from supporting the critical 9-1-1 systems that citizens rely upon in their times of greatest need).

⁴⁵ *See, e.g.*, APCO Comments at 5 ("Congress should also mandate that states use such fees only for NG9-1-1 purposes."); MSI Comments at 4 ("Funds and fees collected and monies appropriated for NG9-1-1 need to be reserved only for use in connection with 9-1-1 related operations and development. The Commission should work with Congress and the states to ensure that funds are identified, secured, and appropriately used."); Verizon Comments at 9 ("Other states, however, permit the state or local fees to be used for general and administrative

Further, several parties have expressed concern that existing 9-1-1 funding models impose too great a burden on wireless providers. Today, 9-1-1 service generally is funded through the imposition of a line item fee or surcharge on a network carrier's customer bill. As AT&T observed, because emergency communications now involve multiple service providers – and this will only increase with the advent of NG9-1-1 – this results in network providers and their customers bearing the sole burden for funding the expanding 9-1-1 universe.⁴⁶ For this reason, both Verizon and TracFone have urged a funding framework that takes into account the need for more appropriate funding mechanisms.⁴⁷ As an example, a majority of states and U.S. territories have enacted retail point-of-sale (“POS”) legislation for prepaid providers since 2009, designating the collection of 9-1-1 fees at the POS either as a flat fee per card or as a percentage of the retail purchase price.⁴⁸ CTIA encourages the Commission to closely examine these types of issues in developing its recommendations for Congress, and to devise a funding model for NG9-1-1 that is viable and sufficient to fund the numerous innovations associated with NG9-1-1.

IV. THE COMMISSION SHOULD EXAMINE THE INTELLECTUAL PROPERTY IMPLICATIONS OF ITS NG9-1-1 FRAMEWORK.

Finally, CTIA urges the Commission to examine the potential intellectual property implications of its NG9-1-1 framework. In its Comments, TeleCommunication Systems, Inc. (“TCS”) noted that companies subject to the Commission's jurisdiction and others may own, control, or develop intellectual property rights that are directly relevant to the provision of NG9-

expenses, and there have been instances in recent years of states reallocating 911 funds to their general funds in order to balance their budgets.”).

⁴⁶ AT&T Comments at 8.

⁴⁷ Verizon Comments at 10-11; Comments of TracFone Wireless, Inc., PS Docket Nos. 10-255, 11-153, and 12-333 (Dec. 13, 2012) (“TracFone Comments”).

⁴⁸ TracFone Comments at 4, Verizon Comments at 10-11.

1-1.⁴⁹ As a result, the Commission’s “mandatory 9-1-1 requirements that require the use of [intellectual property rights] create an unfortunate arbitrage opportunity for litigation-minded [intellectual property rights] holders, patent assertion entities, sometime called ‘patent trolls,’ that use the FCC’s rules to force carriers and their vendors into licensing agreements or face crippling litigation expenses.”⁵⁰

With this concern in mind, TCS has filed with the Commission a Petition for Declaratory Ruling and/or Rulemaking that asks that the Commission either: (1) issue guidance that in all circumstances compliance with E9-1-1 rules is in furtherance and fulfillment of a stated government policy, and therefore is by and for the government, thus triggering 28 U.S.C. § 1498,⁵¹ or (2) require that patents that cover E9-1-1 or NG9-1-1 services and capabilities be offered for licensing pursuant to reasonable terms and conditions that are demonstrably free of any unfair discrimination.⁵²

As the legal framework for NG9-1-1 develops, CTIA encourages the Commission to recommend that Congress avoid adopting any new requirements that are specific to particular technologies and services and, in doing so, force covered entities to utilize technologies not available under fair, reasonable, and non-discriminatory (“FRAND”) terms. CTIA believes that

⁴⁹ TCS Comments at 11.

⁵⁰ *Id.*

⁵¹ This statute provides, in relevant part, that “[w]hen an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner’s remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture.” 28 U.S.C. § 1498.

⁵² Petition for Declaratory Ruling and/or Rulemaking of TeleCommunication Systems, Inc., GN Docket No. 11-117, WC Docket No. 05-196, PS Docket Nos. 11-153 and 10-255 (filed July 24, 2012).

any new requirements addressing specific technological or service issues should be standards-based and outcome oriented. These efforts can better prevent some of the intellectual property litigation issues that have arisen in the E9-1-1 context from extending to NG9-1-1.

V. CONCLUSION

CTIA and its members look forward to continued active participation in the development of NG9-1-1 technologies, policies, and services. CTIA commends the Commission for undertaking this thoughtful analysis of the appropriate legal and regulatory framework for NG9-1-1, and urges it to encourage Congress to consider proposals consistent with those recited herein.

Respectfully submitted,

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